CONST. CONVENTION
I-1.o
Ag.-29-34
Super.

4:30 p. m.

APERTURA DE LA SESION

Se abre la sesión a las 4:30 p. m., bajo la presidencia del Honorable, Claro M. Recto.

EL PRESIDENTE. Léase la lista de los Delegados.

SR. CUENCO. Sr. Presidente, pido que se dispense la lectura de la lista.

EL PRESIDENTE. Hay alguna objeción? (Silencio). Se dispensa la lectura de la lista. Hay quorum. Léase el Acta.

APROBACION DEL ACTA

EL SECRETARIO lee el acta de la sesion anterior, del 28 de agosto de 1934, la cual es aprobada.

PROPOSICIONES DE CONSTITUCION

EL SECRETARIO, leyendo: (Insertese. Véanse Acta No. 25).

EL PRESIDENTE. Esta en orden ahora la continuación de la consideración del proyecto de resolución No. 60 de la Convención. Léanse los nombres de los que han registrado turnos en favor y en contra de dicha resolución.

EL SRECRETARIO los lee.

SR. ENCARNACION. Sr. Presidente, si es que hay lugar todavía, yo deseo registrar un turno en contra.

MR. CINCO. Mr. President, I would like to register a speech against the resolution.

MR. ABORDO. Mr. President, I would like to speak in favor of the resolution.

SR. RIBO. Sr. Presidente, para un turno en contra.

SR. ORTIZ. Para un turno en pro.

SR. ARELLANO. Sr. Presidente, si se me permite, voy a pedir que se me registre otro turno en favor.

SR. LOCSIN. Para otro turno en favor.

SR. PAREDES. Para un turno en contra.

SR. PERFECTO. Sr. Presidente, propongo que se adopte un orden alternativa en la cuestión de los turnos.

SR. GUEVARRA. Sr. Presidente, yo propongo que los proponentes de la resolución, asi como los opositores, tengan sus respectivas managers o liders para la disposición de los oradores, asi la Mesa se ahorraría el tiempo de tener que registar los turnos en pro y en contra. Cada lider que se encarge de designar los que van a hablar.

EL PRESIDENTE. Primeramente se necesita presentar un moción limitando el tiempo, porque si no vamos a limitar el tiempo del debate no se pueden designar líderes o managers.

SR. GUEVARRA. Entonces, retiro mi moción por ahora, hasta después del discurso del caballero por Capiz.

MR. ABAYA. It is very evident that all the members of this Convention are now very well informed of the resolution. In order not to waste time, I believe that we could not vote on the resolution.

EL PRESIDENTE. Cuando termine de hacer uso de la palabra el Caballero por Capiz, la Mesa propondrá la moción del Caballero por Laguna.

MR. ROXAS. Mr. President.

SR. GUZMAN (ANTONIO). Sr. Presidente, Parece que se han registrado muchos turnos, pero podrán reducirse los turnos en un número determindao, para que no se pierda mucho tiempo.

EL PRESIDENTE. Mas tarde se tratará sobre esa cuestión.

DISCURSO DEL SR. ROXAS EN FAVOR.

MR. ROXAS. Mr. President and Gentlemen of the Convention: The newspapers this morning, describing the debate that took place yesterday on the pending Resolution noted the very unhappy sailing of a

noted the very unhappy sailing of all those members of this chamber who tried to brave the rather rough seas of this Convention. I am not a good sailor, Mr. President, and I wish to request the members of the Convention to permit me to unload safe in port first the meagre cargo that I may be fortunate enough to have a happier sailing and in a smooth sea. As I rise to speak on the pending resolution, I am not moved by the mere joy of combat as the Romans used to express it in that beautiful phrase that has come down to us: gladen certamenen. Neither I am moved by the warlike spirit immortalized by the poet when he said:

"The stern joy that warriors feel
Of foemen worthy of their steel."

If I have decided to take up the time of this Convention, it is due to the .....

deep conviction that in the discussion of this resolution we must necessarily touch upon the very fundamentals of the task in which we are engaged. We have to solve t is question now or later on. We have to determine what kind of a constitution we shall adopt. We must come to a definite conclusion whether we are going to limit the task of this constitutional convention to the approval of a constitution for the commonwealth and destroy its life after that, or shall we, as all other constitutions have been passed and approved, adopt constitution that will be permanent in character based on the will and purpose of the Filipino people.

In order to arrive at a correct conclusion on this subject, we can not avoid an examination of the powers of this constitutional convention. If you will bear with me, I would like very much breifly to state my views on the authority of this body. What is a constitutional convention? Does it have, as has been

stated once

stated once on this floor, sovereign powers? Is it a creature of Congress? Is it a creature of the people? Is it like the legislature that may exercise delegated powers from a sovereign? What is a constitutional convention? After we have determinedd what a constitutional convention is and have decided what are the limits of our powers we man better, I believe, determine whether we can adopt a constitution for the commonwealth or whether we can adopt a constitution for the Republic of the Philippine Islands as has been proposed.

I wish to say at the outset that while I am not in general agreement with the purpose of the pending resolution of this body, it should suffer a few appropriate amendments. Only after these amendments are approved can I give mu vote to this resolution.

A constitutional convention is the child of America and American political philosophy. A constitutional convention is the product of American philosophy of constitutional Law. It tas unknoon, at least within my knowledge, Mr. President, before the American colonies formulated and drafted the constitution that was later submitted to their people for approval. According to eh the authors, it arises from the very essence of popular government as ~~xxxxxxxxx~~ conceived by the Americal people. Under the American philosophy of constitutional liberty, sovereignty and governental powers reside in the people. As the people, because of their numbers, because of their circumstances, are unable to meet in a general town meeting in one place to deliberate over their constitution, they have thought on the expedience of a constitutional convention, the members of which will represent them in the formulation of the constitution. A constitutional

convention, therefore, is a representative body. But it is not sovereign. Nothing that it can do can have effect ex propio vogore. It must be sanctioned by the people before it can have effectiveness. A very famous author has therefore concluded that a constitution is nothing more or less than a committee, a special committee chosen by the people who are about to draft a constitution to formulate the instrument upon which their approval will be sought.

Having established the nature of a constitutional convention, the second inquiry is: What are its powers? I do not want to burden the members of this convention with a citation of the many authorities on this subject, The books are full of these authorities. The authorities say that a constitutional convention being a special committee charged with the duty of formulating and drafting a constitution, ut must act within the limits of its powers. It can not transcend its mandate. It is not sovereign and nothing that a constitutional convention does in violation of its mandate can have any effect. In our present case, if this constitutional convention commits acts that are ultra violis beyond its powers, the President of the United States may disapprove the constitution that will be presented to him for approval.

Now, what are the limitations of our powers? The limitations to our power are precisely the limitations of the powers of our principles, the people of the Philippine Islands. We can formulate a constitution that the people of the Philippine Islands have a power under the law to adopt. We cannot draft or formulate a constitution that is violative of the restrictions and limitations imposed by the independence law.

Now, what are the powers of the people? Section 1 of the Tydings-McDuffie Act says that our people will adopt a constitution for the Commonwealth of the Philippine Islands, May I remark in passing that this is the first time in the political history of the Philippines Islands that an Act of Congress uses the word "constitution." What does a constitution mean? I know, Mr1 President, that every member of this convention has an accurate knowledge of the meaning and import of the word. But I wish to remark that the word "constitution" in the Inpdependence Act must be construed and interpreted by us as a constitution is construed and interpreted in the United States. By all rules of statutory construction the word "constitution" in the Independence Act must be construed and interpreted as that word means and that instrument imports in the United States of America. To the same ..... effect the phrase "republican form of government"used in the Tydings-McDuffie Act must be interpreted to mean that a republican form of government means in the United States, and a bill of rights must be construed to mean what it is construed as a bill of rights in the United States.

Now, a constitution in the United States is not absolutely identical with the nature of a constitution in Japan, In France, in Germany, or in other countries of the world. There are several classes of constitution, but when the independence Act mentions a constitution the Independence Act means that we are going to draft a constitution as that instrument is understood in the United States. This is very important, Mr. President, if we want to arrive at a correct decision over this resolution.

What is the first characteristic of an American Constitution? First, that it derives its authority from the people. Second, that it is permanent, that it is of the essence of the instrument as concieved in the United States of America. I have a quotation from Chief Justice Marshall in the case of Marberry vs. Madison, who says that "the people have an original right to establish for the future government such principle, as in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercises of this original right is a very great assertion. The principles so established are deemed fundamental and as the authority from which that procedure to supress and can seldom act; they are designed to be permanent." If the constitution derives its powers from the people, the question may be asked: From whom do we derive this power in the constitutional Convention — from the American Congress or from the people? My reply is, from the people. The American Con ress has given us the right to adopt a constitution. But the right to form a constitution presupposes the right to govern—sovereignty, as this has been defined by the ancient and modern writers. We can talk of a constitution in accordance with American philosophy of Constitutional law without presupposing behind it sovereignty in the people that approve it. If, therefore, because we have the power to adopt a constitution, we must perforce admit that the people are sovereign, why does the Independence law.....impose limitations on our power? The reply is evident. The American Con ress, in the Independence Act, has in effect told the Filipino people: You have the right to govern yourself. You can adopt and formulate a constitution for your government, but during the intermediate period and until the complete withdrawal of American sovereignty b from your country, your sovereignty will be restricte by

the following mandatory provisions. These restrictions are imposed by Congress, but, Mr. President, to prove that a constitution must exclusively be the work of the people, Congress requires that the constitution must contain these mandatory provisions. That is to say, the people of the Philippine Islands by their votes must accept these mandatory provisions, otherwise the whole process provided in the Independence Law would fail and lapse.

We come to the next question, Mr. President: If we are sovereign and draft a constitution within certain limits, to whom does the residuary of sovereignty belong? That is to say, who has the power that will borne the limitations that is imposed by Congress? Is it Congress or is it the Filipino people? In the language of the American courts, who is the residuary legatee of sovereign power, those that are not mentioned as included in the restrictions imposed by the Independence Act? My reply is, the people of the Philippine Islands. We are completely sovereign; we can adopt any constitution that we want subject to the limitations imposed by Congress, but these limitations to be operative must be included by us in the constitution that we adopt.

Now, Mr. President, the question has been raise; Are we going to adopt a constitution for the Commonwealth and for the Commonwealth alone, or are we going to adopt a constitution for the Commowealth and for the Philippine Republic that is to born, or are we going to adopt a constitution the the Philippine Republic and provide for the Constitution of the Commonwealth by transitory provisions in that constitution? I suggest, Mr. President, for that we can adopt theoritically three methods. And I wish to make emphasis on the word "theoritically", because as I will attempt to show later, this that we could do theoritically could not be be done in practice. I suggest that we could attempt one of three methods: First, we could adopt a constitution for the

Commonwealth of the Philippine Islands, and in that constitution, insert the mandatory provisions of the Independence Law as they appear in Art. 2, Sect. (a) and Sec. (b). Under this method, the people of the Philippine Islands would be required for they are going to fill the necessity before the expiration of the transition period, to call another constitutional convention in order to provide appropriate amendments to the constitution that will take care of our government after the mandatory provisions have ceased to become operative. The second method is, as at first I thought was suggested by the resolution, we could adopt a constitution for the Philippine Islands, saying that this constitution will be inforce during the Commonwealth and will continue in force after the republic has been organized. The third method is to adopt a constitution for the commonwealth of the Philippine Islands and attach to that constitution an ordinance stating "upon recognition of the Philippine independence and the final and complete withdrawal of American sovereignty over the Philippine Islands, the Philippine Commonwealth shall become the Republic of the Philippine Islands.....
and the constitution of the Philippine Commonwealth shall become the constitution of the Republic of the Philippine Islands," and in addition to that, state the following " notwithstading the provisions of the foregoing constitution the following mandatory provisions shall be in force during the existence of the Commonwealth until the final and complete withdrawal of American sovereignty." I am of the opinion, Mr. President, that while these three methods can be undertaken theoritically we can only adopt the last method for all practical purposes.

What are the objections to a constitution for the Commonwealth of the Philippine Islands without the inclusion of the mandatory provisions in that constitution? The objections are obvious. If we

adopt a constitution for the Commonwealth of the Philippine Islands and insert in that constitution the mandatory provisions of Section 2 (a)and (b), what will happen? In Section (a) we provide that religous freedom will be guarantedd, but Mr. President, that provisions of Section 2(a) will only operate until after the final and complete withdrawal of the American sovereignty. What will happen if our constitution will be silent on religious freedom? Again, section (b) of Article 2 clearly states that these provisions shall be inserted in the constitution ~~of~~ the Commonweal th but will not become operative until after independence. How can we, Mr. President, adopt a constitution that will poerate only during the Commonwealth and at the same time insert in that constitution provisions which will not become operative until after the Republic has been born? It cannot be done. This constitution that we are going to adopt according to Section 2 must contain several provisions that will not become operative during the Commonwealth but will become operative after independence. Therefore, the constitution we must adopt here because of that provision must contemplate that it shall be in force upon the advent of the Republic, otherwise paragraph (b), Section 2, could not find and appropriate place in that constitution I shall not atlk about the second method. Why can we approve a constitution for the Philippine Islands that will be operative during the Commonwealth and after the Republic? I have serious doubts, Mr. President, whether in accordance with the principles I have already stated regarding the limited powers of this Convention, we can adopt any other constitution than the constitution for the Commonwealth of the Philippine Islands. Section 1 is very clear. This Constitutional Convention has been convened to adopt and formulate a constitution for the government of the Commonwealth of the Philippine Islands. I want to call your attention to the fact that the word "Commonwealth" is capitalized. The word is not used in its generic sense;

it has been used as a nound substantive as a part of the name given to the political entity that will be created as a result of this constitution. Commonwealth of the Philippine Islands, that is our name. We have no power to change it. The people of the Philippine Islands with all the power of wovereignty granted by the Congress of the United States cannot eliminate that name. Our powers are limited to the adoption and formulation of the Constitution, for whom and for what? - for the government of the Commonwealth of the Philippine Islands. I do not believe, Mr. President, that we would be .....

acting according with our power if we adopt a constitution for the republic of the Philippine Islands or for the Philippine Islands without including the word "Commonwealth". Why? This has its reason. Congress is approving the Independence Act stated clearly its intention of giving liberty and independence to the Filipino people but in the wisdom of Congress irrespective of the opinion we may entertain about the matter, Congress believes that a sudden disruption of political and economic relations with the United States would work hardship to the Filipino people. Therefore Congress provided for an intermediate period before independence is granted. But anxious to proved its good faith, anxious to take the first step leading to the final and complete enmancipation of the Philippine Islands, Congress has provided for the establishment of a Philippine Commonwealth. Commanwealth, I repeat, is not used in this instance in its generic acceptation but as a part of the proper name given to the body politic to be established under the Constitution which this Convention must adopt. What does Commonwealth mean? It is within the knowledge of this Convention. But may I be excused for digressing a while in one point? I habe noticed, Mr. President, that in all the translation of the Independence Law, the word "Mancomunidad" has been used as the equivalent of Commonwealth. I trust that the members of this Convention will find it opportunete and wise to study carefully whether

the word "Mancomunidad" in Spanish signifies and is the equivalent of the word "Commonwealth". I confess I do not know. I know too little of the language which is so well known by the member of this convention to try to speak on the subject. But I believe that the word "commonwealth" is the best word that can characterize a free state. It is a society of individuals that become the owner of a given patrimony. It denotes sovereignty; it denotes power of government in the hands of the people. In fact, all the books I have been able to read on this subject, and they are not a few, Mr. President, have always made "commonwealth" the equivalent of republic. Commonwealth is the root of the word, and when the government of Australia, ...

Mr. President, was organized, a famous statesman of that free country, Mr. Edmund Burton, remarked: The free and sovereign states that forme the English Commonwealth of nations have adopted the title of Commonwealth because of them Commonwealth is the grandes and most stately name by which a great association of self-governming people can be characterized. I have followed somewhat the history of the autonomous communities of Spain that have called themseoves mancomunidad. I have not been able to find the origin of that word except that appears in the law books, which indicates property in common; but I have no doubt, Mr. President, that this autonomous commonwealth of Spain is not on a par with the British Commonwealth or the Commonwealth of the Philippine Islands when constituted as regards the foundation of their free institutions. These mancomunidades in Spain, as far as I can gather, obtained their charter from the Spanish Cortes, They are self-governing communties whose powers are derived from a superior authority different from the people. Under our Commonwealth, there will be no powers that are more supreme or equally supreme as the people themselves subject, during the ten year period, to the limitations prescribed in the law.

I therefore, repeat I believe it would be a fruitful study for some industrious members of this Convention to provide us with a new word in Spanish that would signify exactly the equivalent of Comhonwealth, and if that is not possible, that we, in the official translation or in the official original in Spanish of the constitution, abstain from translating the name of our body pblitic and that it be called in Spanish, in English, in Tagalog, In visayan, the Commonwealth of the Philippine Islands.

I come, Mr. President, to the third proposal. Before I leave the second method, I wish to add it is not the preamble of paragraph b, of Section 2, that is a bar to the adoption of acconstitution that will be for the Philippine Republic, but Section 10 of the Act says: that the government that is to be recognized is not the Philippine Republic; the government that will receive the sovereignty, jurisdiction, possession and supervision which America .....
will return to the Philippine Islands upon the expiration of the transition period is the Government of the Commonwealth of the Philippine Islands organized under the constutition that will be approved now, and no other. If therefore we adopt a constitution for the Republic of the Philippine Islands we will have to face two great obstacles first, the provisions of Section 1 and the provisions of Section 10, directing the President of the United States to withdraw sovereignty in favor of the government that we will organize in accordance with the constitution for the Commonwealth that we will adopt.

The third method to my mind, as, according to the newspapers was stated here by my able colleague from Capiz yesterday, is we have no choice in this matter. We must adopt a constitution for the Government of the Commonwealth of the Philippine Islands, but of course of the transition period. Now how can that be done? We could adopt an ordinance as suggested

by Section 2, as I stated before, containing at least, among others .....

these two sections: first, notwithstanding the provisions of the foregoing constitution that will be complete in itself, the following provisions of Section 2 of the Act of Con ress granting independence to the Philippine will be enforced during the transition period; second, upon the regegnigion of Philippine Idependence and the final withdrawal of Amercan sovereignty from the Philippine Islands, the Philippine Commonwealth shall automatically become a Republic of the Philippine Islandss And I am goind to point out to you a very significant provision under Section 2, paragraph b, No. 2. I think this paragraph contains the key to the difficulties that we are now encountering. It says that this constitution for the commonwealth must contain a provision that will become effective after independence as follows: "That the officials elected and serving under the constitution adopted pursuant to the provisions of this act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution. May I take a little time to elaborate on this. I will attempt to give you the exact situation at the expiration of the ten year period. I understand that a great majority or at least very many of the members of this convention have made up their minds to provide a four-year period for the Chief Executive of the Commonwealth, or the Governor-General as he may be called. That means that at the expiration of the eight year we will have an election for the President of the Commonwealth. When the tenth year comes this President who may be elected on the eight year will only have served two years his term. Number 2, of paragraph b of section 2 says in that case this President and the Legislature that was

elected with him will not cease, their term of office will not terminate upon the tenth year. They will continue serving their full terms under our law. It states very clearly in accordance with our constitution, that is to say, in accordance with the constitution that we are now going to approve To me, Mr. President, this a decisive authority, that the constitution that we will adopt now should be the constitution of the Commonwealth and its life should not terminate and cannot terminate under the provisions of the law upon the advent of independence, but rather, that the constitution for the Commonwealth that we are to adopt now will have an indefinite life, will be permanent, subject of course, to revisions, amendments and other changes that may be adopted constitutionally. In other words, changes which may be adopted in accordance with the provisions of the constitution itself. For these reasons, Mr. President, I submit that it is not possible for us even if we wanted to, to adopte a constitution for the goverment of the Commonwealth alone decreeing the death of the constitution "a priori" upon the advent of independence.

Second, that we cannot adopt a constitution for the republic of the Philippine Islands in this instance because our authority extends only to the adoption of the constitution of the commonwealth of the Philippine Islands. But that we can harmonize all our problems.....

and difficulties. We can within the strict limitations provide with adequate safeguards of the rights of the people if we should adopt a constitution for the commonwealth of the Philippine Islands, complete in itself, and attached to it an ordinance including the mandatory provisions and providing for the change of the name of the body politic upon the advent of independence. One reason, Mr. President, is expediency that we should adopt it is course even if we have another corse. This is the first time in the history of the world that an Oriental people has assumed the prerogative of adopting a constitution, a consti-

tution as such an instrument as is understood in the United States and such instrument it will be after the document that we will draft here will have been approved by the people. Examine the histories of the countries of the Orient, examine, Mr. President, the history not only of the Orient but the countries that heretofore have been called the tropics, and you will find just a few instances if any, of a people who, like ours, will have this opportunity. Siam has a constitution but that constitution of Siam does not contain the delegation of powers from the people to the government that they created. The constitution of Siam was snatched from the King of ..... Siam to limit the powers not sanctified by the guaranty of the rights of the people. The same may be said to the constitution of Hapan. I do not care to speak here on the constitution of China which is well known to everyone. Certainly, that constitution does not posses the basic feature of the political instrument that we are about to adopt. Occidentals who are carrying commerce with us, men of other countries who live with us with questioning eyes are asking what of the future? They would like to find out what will happen here that would help them to determine whether to continue business here or not. What kind of government shall be established after independence? Shall private property be protected, as it will be protected under this constitution? Shall religious liberty be safeguarded? Shall the freedom of commerce and the right of profession not be violated? Shal there be no confiscation of property or shall there be safegaurds of due process of law, and the prohibition that no man shall be deprived of his property without due pompensation when taken for public use, be upheld? But if we adopt a constitution for the Commonwealth alone those questions would

not be answered. If we should adopt a constitution for the Commonwealth whose life will be prolonged indefinitely..... a constitution to be permanent that constitution will give a reply to t es questions. That constitution will tell all these foreigners who want to associate with us that they should not be afraid. All these guarantees will be maintained, property rights will be safeguarded and individual rights maintained ~~xxxxxxxxxxx~~ immaculate and sanctified, free from the abuses not only by the government but by the people creating the government. I repeat, Mr. President, with appropriate amendments, I shall vote for the resolution. Now, I a, willing to answer questions.

EL SR. KAPUNAN FORMULA ALGUNAS PREGUNTAS AL SR. ROXAS.

SR. KAPUNAN. Para algunas preguntas al orador, Sr. Presidente.

EL PRESIDENTE. Desea contestarlas el orador?

SR. ROXAS. Con mucho gusto.

SR. KAPUNAN. Han sido demasiado interesantes para mi las consideraciones del Caballero por Capiz (Sr. Roxas). Desearia, sin embargo, que nos ilustre sobre estos dos punto nada más. Es necesario que un pueblo que quiera redactar su constitución este dotado de una soberanía ilimitada para que puede redactar a sus anchas la constitución que me le convenga?

SR. ROXAS. No, señor.

SR. KAPUNAN. Y que es lo que hace falta?

SR. ROXAS. Un pueblo para que puede redactar su constitución, bajo la filosofia constitucional americana, tiene que ser un pueblo soberano. Los clasicos, los academicos han sostenido el principio de que la soberania era indivisible; en los tiempos de Ciceron decian que no puede existir un "imperium in imperio;" una soberania no puede coexistir dentro

de otra soberania en un país. Expresaron la teoria de la soberania en esta forma: "summa in cives es subditas legibus-que soluta potestas." Decian los clasicos que la soberaria solamente existe cuando era suprema indivisible y asoluta; Una soberania sobre cindadmnos y sobre nacionales no restringida por ley.

SR. KAPUNAN. Entiendo lo que S. Sl quere decir que la soberania es indivisible.

SR. ROXAS. Un momento. Esa era la teoria de los clasicos. La teoria moderna admite la divisibilidad de la soberania, por ejemplo, Cuba redactó.....

su constitución a pesado de la enmienda Platt. Los Estados americanos redactaron su constitución a pesar de su soberania estaba limitada por las disposiciones de la constitución federal, es decir, los publicistas y legalistas de hoy mantienen que la soberania popular no necesita ser absoluta, que con frecuencia una entidad politica o un Estado puede existir aunque su soberania este limitada. Puede haber diversas razones respecto al sujeto o materia sobre la parte de ejercer la soberania pero respecto a esa materia es absoluta la soberanía y debe ser asíp pero para que el Estado pueda ser soberano, no necesita ser absolutamente soberano.

SR. KAPUNAN. Quiere decir S. S. que esa soberania limitada no es más que la manifestación de una autonomía qie otra soberania verdadera le otorga.

SR. ROXAS. Hay una diferencia como el cielo y la tierra entre la soberania y la autonomia.

SR. KAPUNAN. Los que pasa en los Estados de la Union.

SR. ROXAS. Son sbberanos.

SRO. KAPUNA. Pero el uso de esa soberania esta limitada por la soberania de las uniones mismas, de tal manera que tal como estén las cosas en America,desta soberania de los

no es
Estados Unidos más que la expresión de la autonomía que en los Estados modernos no es talsoberanía, sino autonomia, unica legación del poder de la soberania a ese pueblo.

SR. ROXAS. Dije que hay una diferencia como entre el cielo y la tierra, entre la soberania y la autonomía. Somos autonomia hoy, bajo la Ley Jones, es decir, ejercemos el privilegio de gobernarnos a nosotros mismos, bajo ciertas limitaciones, pero no somos soberanos precisamente porque las facultades de gobierno que ejercemos hoy no son nuestras, las ejercemos porqye nos permite el gobierno ejercerlas. El gobierno americano puede retirarlas de nosotros en cualquier momento; pero cuando redactamos la constitución las facultades que nosotros ejercemos, ningun gobierno americano no las podrán quitar.

SR. KAPUNAN. A eso voy yo. Al hablar S. S. del "resituary" power, a que pueblo se refería S. S. que lo tuviese?

SR. ROXAS. Al pueblo de las Islas Filipinas.

SR. KAPUNAN. Si, pero el gobierno americano nos impone disposiciones que solamente afectan a los intereses. No podremos decir que el "residuary power" reside en el pueblo americano, exactamente como acaba S. S. de decir, porque puede retirarnos estas concesiones que no ha hecho?

SR. ROXAS. Sr, Presidente, siento no haberme podido hacer comprender por el Caballero por Leyte, Lo que dije era los siguiente: concediéndonos el derecho de hacer una constitución, esa facultad lleva consigo aparejado el principio de soberania en nuestro pueblo, porque el pueblo americano no concibe una constitución si no dimanara de los poderes del pueblo que formala. Dijo Story que es imposible determinar los confines de la soberania. No ha nacido hasta ahora el estadista que haya podido definir hasta donde se extiende la soberania. Por tanto, cuando el pueblo hace una constitución, delega ciertos

poderes a los funcionarios que elige; pero aquellos poderes que deja sobre si, en sus manos, en estado latente. En el lenguaje del juez Story: "which are boundless in scope and incapable of definition," esos poderes latentes son los que yo había dicho por "residuary sovereignty"...

SR. KAPUNAN. Esos poderes latentes, no se encuentran en el pueblo filipino?

SR. ROXAS. No, todos los poderes en filipinas cuando organicemos la constitución, están claramente definidos en las disposiciones mandatorias que no tienen fuerza por si mismas sino porque van a estar en nuestra constitución, por tanto, estas disposiciones, por lo menos asi es el aspecto legal del asunto, las incluimos en la constitución, y esas disposiciones mandatorias tendría fuerza de ley constitucional porque las hemos puesto alli, y si no estuviesemos dispuestos a ponerlo alli, debieramos haber rechazado la Ley Tydings-McDuffie.

SR. PALMA. Para algunas preguntas al ordaor.

EL PRESIDENTE. El Orador puede contestar, si lo desea.

SR. ROXAS. Sí, señor.

SR. PALMA. Quiero saber un poco más acerca de las manifestaciones del orador, de que la constitución para el Commonwealth debe ser completa. Cual es el sentido de la idea envuelto en la palabra "completa?" Quiere decier el orador, por ejemplo, que aquellas limitaciones contenidas en las disposiciones mandatorias se pueden desobedecer? Quiere explicar más claramente mi idea. Se puede ligislar dentro de la constitution sobre tarifas, inmigración o moneda? Esa es la idea que el Caballero por Capis quiere dar a la palabra "complete?"

SR. ROXAS. Sí, señor, Quiero decir que la constitución a que yo he referido es la constitución completa que podemos redactar con precindencia absoluta de las disposiciones

mandatorias; pero las disposiciones mandatorias constituirán un "omnibus proviso", es degir; notwithstanding the provisions of the foregoing constitution during the commonwealth period, the following provisions shall be in force." es decir; no obstante las dispocisiones de la constitución durante el periodo del commonwealth.

SR. PAMMA. No obstante la provisión sobre ciertas materias?

SR. ROXAS. Si, señor. No obstante, las disposiciones de la constitución durante el periodo del commonwealth, regirán las disposiciones mandatorias, quiero decir, despues de expirado el plazo intermedio y reconocida nuestra independencia, desaparecerán las disposiciones mandatorias en..... nuestra constitución, sin nedesidad de enmendarse ni cambiarse.

MR. MONCADO. Mr. President, will the gentleman yield?

MR. GRAFILO. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield if he so desires,

MR. ROXAS. Mr. President, I want to yield to my able friend the gentleman from Cebu for only one question.

MR. MONCADO. You stated a while ago, Mr. Delegate, that the resolution just presented falls on the provisions of what you stated in the Tydings-McDuffie Law. What I mean, gentheman, is that, is it not too premature to duscuss the resolution now?

MR. ROXAS. I am going to answer the gentleman from Cebu. I do not believe it is premature. As I said at the very beginning of my address, we have to arrive at a definite decision on this matter sonner of later. It is the first thing we have to decide. What is the scope of the constitution that we will adopt? Of course, if by "premature" the gentleman means we can postpone the discussion of this question for a week or for five days, I would have no quarrel with the gentleman; but if the gentleman means that we should not discuss this .....

question in the convention but should discuss this question ten years from now, I am not willing to agree.

MR. MONCADO. Is it not right that the provisions of the resolution falls on section 10 of the Tydings-McDuffie Law which says here the following: ".. on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force."

And, furthermore, you stated a while ago that when a president or a governor-general is elected to office, say for four or eight years, the succeeding president of governor-general's term of office shall not expire, because the term of the period shall not expire. Then, what is the use of presenting this resolution knowing that the provisions of the Tydings-McDuffie Law are specific in the point?

MR. ROXAS. Then, the Delegate from Cebu agrees with my view about what we should do?

MR. CINCO. Mr. President, will the gentleman yield?

THE PRESIDENT. El Delegado puede contestar, si le place.

MR. ROXAS. With pleasure.

MR. CINCO. Do I take Your Honor to be in favor of the approval of the resolution?

MR. ROZAS. With appropriate amendments.

MR. CINCO. But, categorically, does the gentleman mean to say that this Convention should express in some way or another whether we should draft or adopt a constitution for the two periods - the transition period and the independent existence of the Government of the Philippines.

MR. ROXAS. Mr. President, my idea of this resolution is simply to have a notice given to all committees of the Convention to the effect that this is the kind of constitution that we are planning to adopt. This resolution will

have no effect outside this Convention. This will be only a notification to all the members of the different committees that this is the kind of constitution that we are going to adopt. Beyond that it has no effect.

MR. CINCO. I sould like to manifest that I concur with your point of view.

MR. ROXAS. Thank you.

MR. CINCO. However, I do not see any reason for the necessity of approving such a resolution and expressing our view as to whether we should adopt a constitution only to embrace the transition period or the two periods. Does not Your Honor think that by approving such a resolution and expressing our view in that resolution, this Convention will be put in an embarrassing position or rather in a ridiculous position?

MR. ROXAS. Why?

MR. CINCO. In that the Congress of the United States may think that we do not know what we are doing here, that our legislature accepted the Tydings-McDuffie law, that that Legislature does not know what constitution is to be adopted by the Convention, and whether to draft ar adopt a constitution for the transition period only or for the Philippine Commonwealth or for the two periods.

MR. ROXAS. I have a clear idea of what the gentleman means to say; but I disagree with his fear that the Congress of the United States may misconstrue our action, if we would approve this resolution. I believe to the contrary. Congress will recognize that we have interpreted clearly..... its intentions.

MR. CINCO. But Your Honor has stated that the essence of every constitution is that the constitution must be permanent and unchangeable. Then, why should we discuss whether we should draft a constitution that will be for the period only or fot two periods. Your stand

is rather inconsistent.

MR. ROXAS. The reason is because we do not seem to be in agreement, judging from the speeches that have been announced here against this resolution and those that have been announced in favor; there seems to be a division of opinion among the members of this Convention, and we want to reach an understanding or an agreement on this point.

MR. CINCO. Dies not the gentleman think that the most proper way in order not to place this Convention in a rather ridiculous situation before the American People or before the whole world, if I may say that, just postpone the consideration of this resolution until the drafting committed shall have sponsored or recommended a draft of the constitution? As I said, I think, that was the point of view of the gentleman from Cebu (Mr. Moncado) when he said that it was rather premature the discussion of this point when the drafting committee has not submitted a draft of the constitution. When we find that the provisions do not embrace the two periods, then that will be the time to call the attention of the Convention or rather the committee.

MR. ROXAS. I respect the opinion of the gentleman. I am sorry we can not reach an agreement on that point. I am sorry.

MR. ARUEGO. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. ROXAS. With Measure.

MR. ARUEGO. Does the gentleman from Capiz believe that under the independence law we are given the freedom to choose between framing the constitution only for the commonwealth period and framing the constitution not limited to the commonwealth period, but to operate indefinitely?

MR. ROXAS. I do not believe we hafe a choice. As

I said before, I think as a practical proposition, we have only one choice, and that is to adopt a constitution for the commonwealth whose life will extend to and beyond the period of our republic.

MR. ARUEGO. Without mentioning the word "republic" does not the framing of a constitution of such a character that could operate during the commonwealth indefinitely is tantamoune to a constitution that will extend to our republic?

MR. ROXAS. You are right. Mr. President, of course, I suppose many Filipinos are anxious that the name of our body politic be changed upon the advent of independence, and that is the only reason why I believe that we should mention the republic in an ordinance to the effect that, after the recognition of our independence, the Philippine Commonwealth shall be known as the Philippine Republic.

MR. ARUEGO. We are deeply concerned here whether in determining the charzcter of the constitution, we could draft a constitution not only for the Commonwealth, but also for the Republic, without mentioning in the propose constitution the word "republic?"

MR. ROXAS. Yes; the gentleman is right.

MR. ARUEGO. Does the gentleman therefore belive that this convention can frame a constitution which, because of its character, can operate during the commonwealth dna during the republic subject to the limitations of the mandatory provisions?

MR. ROXAS. Yes.

MR. ARUEGO. Does the gentleman therefore believe that this constitutional convention is authorized to framed a constitution that will serve for the commonwealth and also for the republic, without mentioning the word "republic?"

MR. ROXAS. Yes.

MR. GRAFILO. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. ROXAS. With pleasure.

MR. GRAFILO. As I understand it from the gentleman from Capiz that he is infavor of the resolution with amendments. May I inform the gentleman from Capiz that we have here a ready resolution which reads:

RESOLUTION
EXPRESSING THE SENSE OF THE CONSTITUTIONAL CONVENTION THAT THE CONSTITUTION TO BE DRAFTE SHALL NOT BE LIMITED TO THE PERIOD OF THE COMMONWEALTH GOVERNMENT.

WHEREAS, it is necessary to define the scope of the Constitution to be framed for the guidance of the members of the various committees and of the Constitutional Convention: Now, therefore, be it

RESOLVED, that the Constitutional Convention now assembled draft a constitution which shall be effective during the Government of the Commonwealth and for an indefinite period thereafter until the Filipino people shall decide otherwise;

RESOLVED FURTHR, That the various committees of the Convention be furnished copies of this resolution for their guidance.

Adopted,

Is this acceptable to your theory you proposed?

MR. ROXAS. I would propose a few changes, but even as it is, I could vote for that amendment although I think we can make it more definite if we speak something about ordinance. It should be better to have a close understanding, but I could give my vote to that resolution in that form.

MR. ARUEGO. Another question. According to the third plan that you have submitted, the mandatory..... shall form a part of the ordinance to the constitution.

MR. ROXAS. The mandatory provisions not included in section (a).

MR. GRAFILO. Yes, sir.

MR. ROXAS. The mandatory provisions of section (b) must go along with the body of the constitution itself.

MR. GRAFILO. Now, going to the mandatory provisions of section (a), I think you know there is (3) of section (2)

which states about "absblute toleration of religious sentiment shall be secured and no inhabitants or religious organization shall be molested and in person or property on account of religious belief or mode of worship." Now, taking this as part of the mandatory provisions of section (a), and in order that these provisions shall be incorporated in the constitution that we shall adopt, shall we make another provision in the original . . . .

MR. ROXAS. Yes, sir.

MR. GRAFILO. . . . so that when this appendix is taken out, there is a substitution that remains.

MR. ROXAS. That is why I say it must be complete, it shall contain "absolute toleration of religious sentiment, so that when the mandatory provisions disappear in the lapse of time, the constitution shall remain intact.

MR. BOCAR. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. ROXAS. Willingly.

MR. BOCAR. Speaking of the amendments, you have announced that the resolution, as worded, is not acceptable to you but with certain amendments it would be.

MR. ROXAS. Yes, sir.

MR. BOCAR. Is the gentleman pleased now to announce to us the amendments which he proposes, so that we may know what amendments he has in mind?

MR. ROXAS. It is an amendment substantially in the form of what Mr. Grafilo has presented, but when that is discussed I am presenting an amendment to the amendment, of only three or four words, which I believe may improve it.

MR. BOCAR. Personally, I think it is clear in the law that the constitution we shall drat must be for the commonwealth and the republic. And with your elucidation of the point, it seems to me it has become more clear. Does not the gentleman believe that without the necessity of ap-

rpving the point, it seems to me it has become more clear. Doss not the gentleman belive that without the necessity of appoving this resolution, the provision of the law is clear enough to guide the committee in this respect?

MR. ROXAS. That is what I believe, but that does not seem to be the opinion of the members of the Convention.

MR. BOCAR. I have registered a turn against the resolution, not because I think that the constitution is only for the commonwealth, but because the law is clear and I think without the necessity of the resolution, the law is clear to guide the committee.

MR. ROXAS. If that is the case, the gentleman agrees with me that we have no choice about the matter, that is what we have to do, and also I believe that is the best thing for us to do.

MR. BOCAR. Then what is the need to approve the resolution?

MR. ROXAS. My answer is, because our opinion is not shared by many of the members of this convention.

MR. BOCAR. I think t ose who are against the resolution are not against it because they are against the drafting of a constitution for the commonwealth, but because they think that at present it is not necessary.

MR. ROXAS. That is not my understanding.

Mr. President, I am afrain I must not yield further, unless the Chair wants me to continue.

MR. CONOL. Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield if he so desires.

MR. ROXAS. Willingly.

MR. CONOL. Does the genelleman make us understand that in his interpretation of the Tydings-McDuffie Law there will be no more convention to be called to draft another constitution? That this will be more or less the first the

and the last convention to draft the constitution for the commonwealth and for the Philippine Republic?

MR ROXAS. Well, that is a matter on which there does not need to be any difference of opinion This constitution that we adopt will provide the manner in which it may be amended. Now, you can amend an instrument by striking everything after the enacting clause and change it and that would be a new constitution, or .....

you can change it by changing only a word or two. Therefore, it will depend upon what the people want.

MR. CONCL. Is there any need for another convention?

MR. ROXAS. There may be a need.

MR. CONCL. Now, who will be the delegates that will be appointed by the people in order to draft the constitution?

MR. ROXAS. There will be no more need unless we amend this constitution afterwards.

MR. PERZ (J.). Mr. President, will the gentleman yield?

THE PRESIDENT. The gentleman may yield, if he so desires.

MR. ROXAS. Willingly.

MR. PEREZ (J.). Is it not a fact that the Tydings-McDuffie Act only grants soveriegn powers to the commonwealth and not sovereignty, for sovereignty will still reside in the United States. Will you pleas define that term "sovereignty power" and "sovereignty?"

MR. ROXAS. I have here in my hand a manuscript on sovereignty and sovereign powers which I would be very glad to hand over to my friend, the delegate from Negros, expressing my views. It is a long subject. But I am going to say this in substance: Sovereignty and sovereign powers - sovereign powers is just a description of sovereignty. Sovereignty is the totallity. Sovereign powers is exercised by the entity that has the sovereignty. And the sovereign powers may be divided. But sovereignty, accord-

ang to the ancient and the academicians, is indivisible. Sovereign powers may be divided, that is to say, the peopel, may grant certain soveriengg powers or may delegate certain sovereign powers to their representatives and retain the rest. Now, what happens with the law is this, Mr. Gentleman from Negros. We are given the totality of sovereignty from my viewpoint. Now, there are two viewpoinss here. My viewpoint is that the United States Congress, by giving us the right to draft a constitution, has given us the totality of sovereign powers or the exercise of these sovereign powers during a certain period that is limited. That is to say, you may exercise all the powers of sovereignty provided, however, that during the period of ten years, you cannot .....

do this and you cannot do that. Now, that is the substance of this legan enactment. And to prove that in the opinion of Congress soveriengty is indivisible, you will find in the Tydings-McDuffie Law in several places the following: "until the final and complete withdrawal of American sovereignty x x x," What does that mean? It means that there has been a partial withdrawal of sovereignty, that the sovereignty is not complete. Complete sovereignty will come after our sovereignty shall have been recognized. "Until the final and complete widrawal." This partial withdrawal of sovereignty is to enable us to draft this constitution.

There is another theory as to the meaning of sovereignty which I think will satisfy the obd members of the constitutional convention at Malolos and the Veterans of the Revolution. It is a theory held by the ancients also, that sovereignty cannot be transferred. The people have it as an inalienable right and sovereignty may be suspended for a while, but when the force that .....

suspends the exercise of sovereignty is removed, sovereignty

of its own force reasserts itself. Now, applying that theory to the Philippines, there was much justice in the statement of:

(Quotation to be inserted)

But I believe that is not the theory under which the Independence Act was passed, because the AmericanCongress in this law implies that sovereignty now resides in America. During the commonwealth, America withdraws a certain portion of that sovereignty and retains some, but at the end of the ten-year period, it finally withdraws its sovereignty.

MR. PEREZ (J.). With respect to the United States, is it not a fact that sovereignty in the United States resides in the people of the United States, and that the..... sovereign powers exercised by each of the different states of the Union are nothing but grants of the Federal Constitution?

MR. ROXAS. I disagree with the gentleman. I am going to read.

MR. PEREZ (J.). Because without grants from the constitution these several states of the United States would not exercise the sovereign powers which they now exercise.

MR. ROXAS. I disagree with the gentleman and I quote as authority, Justice Cooley who, after revising all the decisions on this subject, says in his monymentah work:

> "The theory of our political system is that the ultimate sovereignty is in the people from whom everything....."

MR. PEREZ (J.). Does the gentleman believe, therefore, that if the Federal Constitution respecting the reserved right of the States were not written in the Constitution

the several states would still exercise sovereign power?

MR. ROXAS. I could not answer that, but it is a part of the Federal compact that the States would have residuary sovereignty.

MR. PEREZ (J). Therefore, the several States of the United States do not have inherent power but only powers granted by the Constitution?

MR. ROXAS. They would have, because a Federal Government is a government of delegated power.

I want to thank every member of the Convention, Mr. President.

EL PRESIDENTE. La Mesa desea llamar la atención de la Asamblea al hecho de que las interpelaciones consumen mpas tiemp que los discursos, y como se han registrado más de 20 turnos, por lo visto, tendremos que dar cima a la consideración de este proyecto de resolución antes del lunes, porque en ese día esta señalada la discusión del reglamento de la convention, y por esta razon, dudo que podamos terminar este asunto que esta bajo nuestra consideración hasta la sesión del sabado proximo, la Mesa esta dispuesta a considerar una moción en el sentido de que se limite el tiempo para la discusión del presente proyecto de resolución, tiempo que será dividido entre los que hablen en pro y en contra del referido proyecto de resolución.

SR. CUENCO. Sr. Presidente.

EL PRESIDENTE. Sr. Delegado.

SR. CUENCO. Pido que se lea el proyecto de resolución que acabo de entregar al Secretario.

EL PRESIDENTE. Léase.

EL SECRETARIO leyendo:

ASAMBLEA CONSTITUYENTE

Resolución No. ___

- -

Presentado por el Delegado Cuenco

- -

Se resuelve que la discusión de la Resolución No. _____ presentada por el Delegado de La Union, Sr. Osias, se limite a cuatro horas, dos por la afirmativa y otros dos por la negativa, debiendo distribuirse el tiempo por los delegados Sres. Roxas y Cuaderno, respectivamente.

CONSIDERACION DEL PROYECTO DE RESOLUCION No. _____/

SR. CUENCO. Sr. Presidente, pido que el proyecto de resolución que acaba de leerse sea considerado inmediatamente.

EL PRESIDENTE. Si no hay ninguna objeción, asi se acuerda. (No hubo objeción).

Esta en orden dicho proyecto de resolución.

Esta informada la Asamblea del proyecto de resolución que esta bajo nuestra consideración? El Delegado por Cebu propone en el que se limite a cuatro horas el tiempo que se ha de emplear para la consideración del referido proyecto de resolución, tiempo que sera dividido entre los que han registrado turnos en pro y en contra del mismo, El tiempo de los que hablen en pro será controlado por el Delegado Sr. Roxas, y el tiempo de los que hablarán en contra, por el Delegado Sr. Kapunan.

ENMIENDA GUEVARRA. SU APROBACION

SR. GUEVARRA. Sr. Presidente.

EL PRESIDENTE. Sr. Delegado.

SR. GUEVARRA? Propongo la siguiente enmienda: Que en vez de cuatro horas, sean diez horas, cinco por cada lado.

EL PRESIDENTE. Que dice el proponente del proyecto?

SR. CUENCO. Acepto la enmienda, Sr. Presidente.

EL PRESIDENTE. Hay alguna objeción a la enmienda? (Silencio). La Mesa no oye ninguna. Queda aprobada.

MR. SANDOVAL. Mr. President, before we vote on the resolution I request the chair should ask the delegate from La Union, Mr. Osias, whether he is willing to accept the amendment which was filed, because if the accepts it, there will be no more discussion.

EL PRESIDENTE. No hemos llegado todavía al tiempo de las enmiendas al proyecto de resolución presentado por Delegaro Sr. Osias, y a menos que los delegados que han pedido turnos renuncien al uso de la palabra, no podemos considerar ninguna enmienda por ahora.

MR. CINCO. Mr. President, I should like to ask the proponent of the resolution and the amendment whether the time limited for each side includes the time spent for interpelations.

THE PRESIDENT. Yes.

SR. BOCAR. Sr. Presidente.

EL PRESIDENTE. Sr. Delegado.

SR. BOCAR. Yo quisiera saber si el tiempo que se menciona en el proyecto de resolución incluye tambien el tiempo que se consumirá en el debate sobre las enmiendas que puedan presentarse.

EL PRESIDENTE. El autor de la proposición puede contestar.

SR. CUENCO. No incluye las enmiendas. Es sobre el asunto en su fondo.

SR. SAGUIN. Sr. Presidente.

EL PRESIDENTE. Sr. Delegado.

SR. SAGUIN. Propongo una enmienda a esa resolución, en el sentido de que las interpelaciones no pasen de 1 . . .

EL PRESIDENTE. Estan incluidas las interpelaciones, porque

es privilegiom del orador el contestarlas o no.

APROBACION DEL PROYECTO DE RESOLUCION No. _____/

EL PRESIDENTE. Se va a votar el proyecto de resolución. Los que estén conformes con dicho proyecto, tal como ha sido enmendado, que digan sí. (Varios Delegados:Sí). Los que no lo esten, que digan no. (Varios delegados:NO). Hay una mayoria en favor del proyecto de resolución. Queda aprobada.

SUSPENSION DE LA SESION

EL PRESIDENTE. Si no hay objeción, la Mesa suspenderá la sesión por algunos minutos. (Silencio). La Mesa no oye ninguna.

Se suspende la sesión.

Eran las 6:08 p. m.

REANUDACION DE LASSESION

Se reanuda la sesión a las 6:17 p. m.

EL PRESIDENTE. Se reanuda la sesión.

SR. KAPUNAN. Sr. Presidente, el primer orador de parte de los que se oponen al proyecto de resolución es el Sr. Pablo Lorenzo, a quien se le concede 15 minutos para hablar.

EL PRESIDENTE. Tiene la palabra el Delegado por Zamboanga.

DISCURSO EN CONTRA, DEL SR. LORENZO

SR. LORENZO. Sr. Presidente: despues de haber oido el elocuentisimo discurso del delegado por Capiz, Sr. Roxas, y despues de haber oido tambien las interpelaciones que se han dirigido al mismo Delegado, y despues de oir a los que le han precedido en el uso de la palabra, viene a mi mente una pequeña anecdota que en los días de universidad con el Sr. Roxas, el Sr. Eusebio Lopez y el Sr. De Guzman, aprendí de boca de ellos mismos, y era un caso de un bagobo de la región del compañero Pelayo y compañero Castillo.....

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EL PRESIDENTE. Algunos Delegados se quejan de que no se le puede oir al Delegado por Zamboanga, y por eso La Mesa le invita a que pasará al centro del salon.

SR. LORENZO. Con mucho gusto. (El Sr. Lorenzo se coloca en el centro del salón.)

Iba diciendo caballeros de la Convención que en mis días de universidad, oí una anécdota de labios de los compañeros ya mencionados sobre un bagogo que habia sido convertido al cristianismo. Los compañeros de el, de su propia raza lo habian impuesto la pena de muerte por haber desertado la religión de sus antepasados. Aquel bagobo estaba a punto de morir, pero estaba acompañado de un sacerdote católico quien lo decía:"Hijo mio, vas a morir, pero pronto irás al cielo. Gozarás alla de la felicidad eterna." Y el bagogo contestó: "Padre, quiere usted cambiar mi puesto?" y este es precisamente la testitura en que uno se coloca cuando se dirige a este Cuerpo, porque despues de los discursos que pronunciamos viene una balumba de ruegos parlamentarios cuyas contestaciones resultan mas largas que el discurso mismo.

Caballeros de esta convención: Me opongo a esta resolución porque creo que bajo la Ley Tydings-McDuffie, la ley que nos autoriz a a proceder una constitución que sirva no solamente para la mancomunidad o el commonwealth sino tambien para la Republica. Tengo para mi que bajo la ley actual, solamente podemos aprobar una constitución que sirva como guía y gobierno de los que se llama commonwealth. Es verdad que exis- - - - - - - - - -
ten disposiciones en la Ley Tydings)McDuffie que parece indicar que la constitución que vamos a aprobar regirá tambien para cuando llegue la Repúbica Filipina que ha de suceder al Gobierno de la Mancomunidad. Pero sostengo que esas disposiciones se han insertado alla precisamente para procurar que el cambio de soberanía en el Commonwealth a la de la República Filipina sea un cambio ordenado y sistematico de tal suerte que no se registren desordenes en el pueblo y gobierno de las Islas Filipinas. En

cambio en oposición a estas porciones que se han mencionada tanto por el Comisionado Ozias como por el Delegado Roxas existen muchas otras que nuestros poderes bajo la Ley Tydings-McDuffie son limitadas, son estrechas, y dentro de esos poderes la Convención tendra que redactar la constitución. Por ejemplo, tenemos la prohibición de que esta convención, y la legislatura que se ha decrear por ella, por la constitución, no dictará leyes que moneda, no dictará leyes sobre emigración, no dictará leyes que se refieren a las relaciones exteriores e internacionales del pueblo filipino, porque esos poderes están reservadas bajo la Ley Tydings-McDuffie, al Congeso de los Estados Unidos. Tenemos por ejemplo, que bajo esta ley Tydings-Mcduffie, se impone como una condición que los funcionarios bajo el gobierno de Commonwealth presten juramento de fidelidad al Gobierno de los Estados Unidos, presten obediencia e inclusive sumisión y esta exigencia es incompatible con el ejercicio pleno de la soberania. Es verdad que bajo la Ley Tydings-McDuffie, la misma constitución que hemos de aprobar será la que va a regir cuando entre en funciones la República Filipina; pero eso solo se refiere a los funcionarios de aquel gobierno pero no en cuanto a los poderes de la República Filipina. Por esta razon, entiendo que bajo la Ley Tydings-McDuffie, bajo el articulo primero, la única constitución que podremos aprobar aqui deber ser una constitución para el gobierno del Commonwealth y no para el Gobierno de la República Filipina.

No nos dejemos guiar por la falsa creencia de que bajo la Ley Tydings-McDuffie gozamos de plena soberania; no. Nosotros sencillamente, como muy bien dijo el Sr. Roxas, obramos dentro de los estrechos limites de la Ley Tydings-McDuffie. La soberania completa no se concede bajo esa ley y, por tanto, no podemos legislar, no podemos poner en la constitución aquellas leyes que vitalizan todo pueblo y todo gobierno como son por ejemplo, las leyes tarifarias, las leyes sobre tratados comerciales y

otras leyes de índole similar. Si estos elementos de vitalidad se nos niega precisamente bajo la Ley Tydings-McDuffie, opino, Caballeros de la Convención, que la úni-.....
ca constitución que podremos aprobar para esta ocasión es una constitución para el Gobierno del Commonwealth y no para el Gobierno de la Republica Filipina.

He dicho.

SR. JUMAWAN. Mr. President.

SR. KAPUNAN. Desearía llamar la atención de los Caballeros, Sr. Presidente, que teniendo el tiempo muy limitado para cada orador, creo que se debe reducir el tiempo que se emplea para las preguntas y contestaciones.

MR. JUMAWAN. Mr. President, will the gentleman yield to a question?

THE PRESIDENT. The gentleman may yield.

MR. LORENZO. I will answer only your question but I will not answer any other.

MR. JUMAWAN. What constitution then will operate immediately after the expiration of the transition period?

MR. LORENZO. The constitution that is to be drafted by this convention.

MR. JUMAWAN. But you stated here before us that the constitution that will be drafted for the Commonwealth will operate with regard to officers after the establishment of the Philippine Republic.

MR. LORENZO. Because in my opinion after the organization of the Philippine Republic that the Philippine Republic should call a convention and draft a constitution of its own in accordance with the temperament of those days then.

MR. JUMAWAN. Do you mean to say that the Philippine Republic after it is declared independent will call a convention or before the advent of the Republic?

MR. LORENZO. It can be done in two ways: immediately be-

fore the complete withdrawal of the United States is effected, the Commonwealth of the Philippine Islands may call a convention and draft a constitution that will serve the purposes of the Republic, or immediately after the Republic is established that Republic can still call a convention to draft a constitution for the Republic, and as I said, in accordance with the temperament of the people then living. We should not presume to legislate for people twelve years hence.

MR. JUMAWAN. Does the Government of the Commonwealth have authority to call a constitutional convention to frame a constitution for the Philippine Republic?

MR. LORENZO. It does, because under the Tydings-McDuffie Law any amendment that we may wish to make to the constitution that we are to draft may be done, provided it . . . . . is submitted to the President of the United States, and later on ratified by the people.

MR. JUMAWAN. AHd that is the law the Legislature of the Commonwealth that will be for the guidance for the Constitutional Convention?

MR. LORENZO. I did not catch your question.

MR. JUMAWAN. Does the gentleman mean to say that the law enacted by the Legislature of the Commonwealth will be submitted to the Congres of the United States for approval before we can call a convention?

MR. LORENZO. To the President of the United States as is provided in the Tydings-McDuffie Law. The Tygindings-McDuffie Law provides that any amendment to the Constitution that we are about to draft should also be submitted to the President for approval or disapproval, and later on, for ratification or rejection by the people.

MR. JUMAWAN. But that amendment which you are referring to will hold good during the existence of the Commonwealth, but after the expiration of the transition period, that amend-

ment will not be good.

MR. LORENZO. In a way you are correct. (continuing). Gentlemen, my time is very limited ,, and the manager of the arrangement committee has called my attention that my time has expired, and I am very sorry that I can not answer further questions.

I thnk you.

MR. ROXAS. Mr. President, I yeld fifteen minites to Delegate Aruego from Pangasinan.

SPEECH OF DELEGATE ARUEGO OF PANGASINAN ON THE OSIAS RESOLUTION

MR. ARUEGO. Mr. President and Gentlemen of thés Convention: With your due permission, I should like to speak in favor of the resolution under discussion. From the discussions so far had in this hall, I could gather that the objections of the approval of this resolution are based primarily upon the following: (1) that it is unnecessary; (2) that we have no right to bind the Filipinos of the future and to prevent them from adopting a constitution at the expiration of the commonwealth period; and (3) that we are authorized under the Independence Law to fram a constitution only for the Commonwealth. With your due indulgens, I shall take up these objections one by one.

1. Itthas been said that the passage of this resolution is unnecessary. I think that it is very necessary. the nature of the constitutional precepts already introduced in this convention, the difficulties in the deliberations of the committees already organized and functioning, the conflicting views thus far expressed in this Hall on this resolution show that there are two camps of opinions regarding the scope of the constitution. To one belong those

who believe that we are here to frame a constitution only for the Commonwealth; to the other, t ose who believe that the constitution is not limited to the life of the Commonwealth. The resolution presented aims at an expression of the sanse of this convention as a guide not only to the individual . . . . . .

members, but also to the committees, including the comité de Ponencia, and even to the convention as a whole when it meets in its plenary sessions to consider the proposed draft of the constitution. The expression of the sense of the Convention is necessary as a guide not only in the determination of the matters that must be taken in the Constitution but also of the form and phraseology of its provisions. For, if the constitution that we shall frame is only for the commonwealth, its substance will cover only the mandatory provisions and other matters which we know or believe will take care of the needs of our country during the Commonwealth period. For, if the constitution that we shall frame is only for the commonwealth, the constitution could be so framed that the mandatory restrictions of the Independence Law, instead of being placed in a separate ordinances or appendices, might just as well be woven in the main part of the Constitution, together with the other provisions. For, if the constitution will be only for the Commonwealth, the Constitution may be made detailed just as are ordinary statutes because there can not be very many changes during next ten years that would call for amendments. For, if the Constitution will be only for the Commonwealth, it needs not be very comprehensive; we can include only those things which we think we shall need only for the next ten years. But, if the constitution that we shall frame is not limited

to the Commonwealth period but shall governm us until changed by the people, then it must be so framed that the mandatory restrictions which are only temporary in character should be placed as appendices or ordinances to the same; these restrictions will not be woven in the main part of the constitution in l . . . . . .

order not to demand an overhauling of the Constitution in substance, in language, and in form, after the expiration of the Commonwealth period. Our constitution will then be made more comprehensive in its contents, for we shall include in it constitutional matters that we are intended to meet the needs of our people not only for the next ten years but also those which we think may likely be in the indefinite future. Even the phraseology of the constitution will depend upon the period of our constitution. If the Constitution will be for an indefinite period of time, serving as the fundamental law until changed by the people, it is the dictate of good sense and wisdom that the Constitution be in general rather than in very specific language.

Because of these facts, there is an imperative necessity for ascertaining the sense of this Convention in order to settle this question once and for all, so that we could embody our time and energy with the greatest degree of efficiency possible. Unless the sense of the convention is definitely ascertained, Mr. President, and gentlemen of this body, we shall continue to be in the same confusion, with the proponents of a constitution only for the commonwealth period determining their precepts and wording them to fit only the needs of the country for the next ten years; and with the adherents of a constitution for an indefinite period of time, supporting precepts and wording them in such a way that they could withstand the test not only of a period of

ten years but forever as long as our country would live. Unless we decide this now, the necessity for this expression of sense will come up again in the commite de Ponencia; and even if the comité de ponencia will have decided one way or the other, it will come up again in the halls of this convention when we discuss the . . . . . proposed draft of the Constitution. The expression of the opinion of the convention one way or the other will influence to a very material degree the determination of the contents of the constitution, and even its phraseology and form. The difficulties arising from the failure of the convention to express its sense on the scope of the Constitution will always be present until the sense has been ascertained; the reference of the resolution to a committee will not prevent these difficulties. It will only forestall the time for their coming in more acute form.

2. Another objection to this resolution consists in the fact that the present constitutional convention has no right to daopt a constitution that will bind the Filipinos living at the expiration of the Commonwealth period, depriving them of their rights to determine the constitution under which they should live. With due deference to the wisdom of those who hold contrary view, Mr. President and gentlemen of this Convention, by its nature, is charged with the tremendous responsibility of framing a fundamental law not only for those that live today but also for those that live tomorrow, not only for the people of the present generations but also for those yet unborn in the generations to come. That is what makes the reponsibility of constitutional convention-making unique and solemn; that is what distinguishes constitution-making from ordinary statute making. For while a statute is intended only to meet present conditions, a cons-

titution is intended to meet not only present but also future conditions.

Because of this nature of the work of constitutional convention - that it must lay the basis of the entire . . . . governmental structure, that it must define the fundamental rights of the people not only for the immediate present but also for the remote future, the delegates of constitutional convention are faced with a most difficult task. For they must have to foresee as much as possible the future in order that they can provide for them. That is why when the call for the election of delegates in every country is made, there is evidenced a great caution in their selection. That is why in every country where a constitutional convention is sitting, one finds the press, civic and political societies, in unison try to impress upon the convention the necessity for careful deliberations for upon its worked depends the prosperity and happiness of the living and the unborn.

I know of no constitutional convention which has expressed the sense that its work would serve but temporarily; I know of the people who have looked upon their constitutional convention as a body charged with legislating fo: a short period of time and not for an indefinite period in the life of the country. The National Constitution of the United States framed in 1787 has been in operation for the last 157 years, a marvel in statecraft framed by the fathers of 1787 not only for the Americans of ther generations but for all the generations and generations of Americans, not only for the America of 13 colonies but for the America that in the years that followed developed into a world power; The Constitution of Belgium of today is the constitution that was framed in 1831, with certain amendments authorized by law; the French Constitution today is the constitutional laws of France passed in 1875. We could look around the world for constitutions framed

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many decades . . . . .

ago operating to bind not only the contemporaries of the framers but also their successors.

As members of this convention, of course, we shall try as much as possible to foresee what the needs of our country will be in the years after the commonwealth period; but, if owing to our limited faculty, we could not foresee all the changes in the social, political and industrial conditions of our country and among our people, then those that follow us may make the necessary changes to our constitution using the amendatory process that we shall prescribe in the constitution.

The constitution that we shll frame to serve for the Commonealth and the Republic is not unchangeable, not immutable. If, for any reason, owing to our limited prescience there will be changes in the conditions of our country in future after the expiration of the commonwealth period which we cannot now foresee, let the Filipinos of the future amend or revise the constitution.

But I trust that the members of this Convention, with the help of the Sovereign Legislator, will have the necessary prescience to produce a Constitution that will be able to meet the needs of the present as well as the future, a constitution, which because of its excellence and that of the institutions and rights it provides, will be stable and permanent.

3. The third objection to this resolution has been that the Filipinos are not authorized under the Independence Law to frame a Constitution the effectivity of which will extend beyond the Commonwealth period. I shall not add more to what the proponents have already said on this matter. I wish only to make the following observations:

If the intention of the Congress of the United States was to allow us to frame a Constitution only for the Commonwealth, what is the reason for including in Sec. 2 of the Independence Law the phrase,"pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands"? Why did not the law simply command that the Constitu-

tation should contain matters covered in the mandatory provisions? Why did the Congress of the United States include in Sec. 2 (b) the phrase "effective as of the date of the proclamation of the President recognizing the Independence of the P. I? It must have been to give us a freedom to choose whether the constitution that we shall frame will be for the commonwealth or both for the commonwealth and the republic provided that the mandatory provisions are duly attended to.

LEVANTAMIENTO DE LA SESION

SR. VENTURA. Sr. Presidente, pido que se levante la sesión hasta mañana, a las tres de la tarde.

EL PRESIDENTE. Se ha pedido que se levante la sesión hasta mañana, a las tres de la tarde. Los que estén en favor de la moción, digan sí. (Una mayoria: Si). Los que estén en contra, digan no. (Una minoria: No.). Aprobada.

Se levanta la sesión hasta mañana, a las tres de la tarde.

Eran las 6:48 p. m.